

**AMENDMENT NUMBER 1 to
CONTRACT DIR-VPC-01-007 between
THE STATE OF TEXAS,
acting by and through the DEPARTMENT OF INFORMATION RESOURCES
and BCS SYSTEMS, INC.**

This Amendment number 1 is hereby affixed to and shall become a part of Contract Number DIR-VPC-01-007, effective September 1, 2001, ("Contract") between the State of Texas, acting by and through the Department of Information Resources ("DIR") and BCS Systems, Inc. ("Vendor"). The parties enter into the Amendment Number 1 to restate the Contract in its entirety.

1. The Amended and Restated Volume Pricing Contract, DIR Number DIR-VPC-01-007, is hereby approved by DIR and BCS Systems, Inc. and is attached hereto and incorporated herein for all purposes. From and after the Effective date of this Amendment Number 1, the operative document governing the terms and conditions of the binding contractual relationship between the parties shall be the Amendment and Restated Volume Pricing Contract.
2. In the event of a conflict between the terms and conditions of the Amended and Restated Volume Pricing Contract and the terms and conditions of the Contract, the terms and conditions of the Amended and Restated Volume Pricing Contract shall control.

IN WITNESS WHEREOF, the parties hereby execute their mutual agreement to the terms and conditions of this Amendment and Restated Volume Pricing Contract. Amendment number 1 is executed to be effective and binding on the parties as of September 1, 2003.

BCS Systems, Inc.

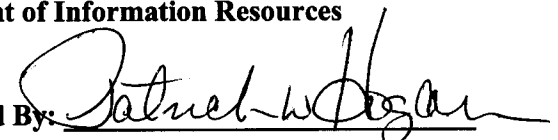
Authorized By: 

Name: J. N. GIBSON

Title: PRESIDENT

Date: 8/28/2003

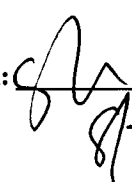
**The State of Texas, acting by and through the
Department of Information Resources**

Authorized By: 

Name: Patrick W. Hogan

Title: Director of Business Operations

Date: 8/26/03

Legal:  8/25/03

RESTATED VOLUME PRICING CONTRACT
between THE STATE OF TEXAS,
acting by and through the DEPARTMENT OF INFORMATION RESOURCES
and BCS SYSTEMS, INC.

This **RESTATED VOLUME PRICING CONTRACT** is entered into between the State of Texas, acting by and through the Department of Information Resources (DIR) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and BCS Systems, Inc. (Vendor) with its principal place of business at 1717 St. James Place, Suite 400, Houston, Texas 77056.

1. Contract Scope and Term

This Contract sets forth the terms and conditions governing the acquisition of HP9000 Server Series products and related services as specified in Contract Posting Document HW RE-BID 0706, as attached as Appendix B, to Customers in accordance with the terms of this Contract. Terms used in this document shall have the meanings set forth below in Section 2, Definitions. This Contract is available for use by all Customers.

This contract was negotiated and executed to be effective September 1, 2001. The term of this Restated Volume Pricing Contract shall be from September 1, 2003 through August 31, 2004. No further extension periods are available. Upon termination or expiration of this Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made by Customers prior to such termination or expiration.

2. Definitions

Terms used in this Contract shall have the following meanings:

- A. DIR** - the Department of Information Resources.
- B. Customer** - any Texas state agency and local government as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003), and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.
- C. Vendor** - BCS, System, Inc. The Vendor designated by DIR who is a distribution source for the Products included under this Contract.
- D. Product** - any Information Resources Technology item included under this Contract. Product may include any pre-loaded software necessary for operation.
- E. Services** - any value-added service that the Vendor may perform as related to products available under this Contract. For example: warranty, support services, installation, and product training.
- F. State Contract Administrator** - the individual as appointed by DIR to administer this Contract on behalf of the State of Texas and the Customers.
- G. Vendor Contract Administrator** - the individual as appointed by the Vendor to administer this Contract on behalf of the Vendor.
- H. Administrative Fee** - the fee used to defray DIR's cost of negotiating, executing and administering this contract.
- I. Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- J. Information Resources Technology (Technologies)** - as defined in Texas Government Code §2054.003.
- K. Day** Shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- L. State** - refers to the State of Texas.

M. Go DIRect Coordinator – refers to the individual appointed by DIR to administer and collect the Contract reporting data on behalf of the State and the authorized Customers.

3. Entire Agreement and Order of Precedence

This Contract; Appendix A, Standard Clauses for Texas DIR Contracts and Appendix B, Contract Posting Document HW RE-BID- 0706, constitute the entire agreement between the parties hereto. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, and finally Appendix B. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto, with the approval of DIR.

The terms and conditions set forth herein shall govern all transactions by Customers under this Contract. Customers shall not have the authority to modify the terms of this Contract, except as to receive better terms or pricing for a particular procurement than those set forth herein. In such event, Vendor shall furnish a copy of such better offerings to DIR upon request. No additional term or condition of a purchase order issued by a Customer can weaken a term or condition of this Contract. In the event of a conflict between a Customer's Purchase Order and this Contract, the Contract term shall control.

4. Product and Service Offerings

Products available under this Contract are set forth as any Information Resources Technology item limited to the HP9000 server series and related peripherals. Services include any value-added service that the Vendor may perform as related to products available under this Contract.

A. Products

Vendor shall maintain a product list including pricing, product descriptions, and product specifications for all products offered under this Contract. The product list may be updated at any time during the term of this Contract to incorporate product model changes or product upgrades, addition of new products, and removal of obsolete or discontinued products.

B. Services

Vendor will maintain a list including pricing and descriptions for all services offered under this Contract. The services list may be updated at any time during the term of this Contract to incorporate changes to the service offering.

5. Contract Administration

DIR and the Vendor will each provide a Contract administrator to support this Contract. Information regarding the Contract administrators will be posted on the Internet web site designated for this Contract.

A. State Contract Administrator

DIR shall provide a Contract administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) advising DIR of Vendor's performance under the terms and conditions of this Contract, and iii) periodic verification of product pricing and monthly reports submitted by the Vendor.

B. Vendor Contract Administrator

Vendor shall provide a dedicated Contract administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) facilitating dispute resolution between the Vendor and a Customer, and iii) advising DIR of Vendors performance under the terms and conditions of this Contract. DIR reserves the right to require a change in

Vendor's then-current contract administrator if the assigned administrator is not, in the opinion of DIR, adequately serving the needs of the State.

6. Geographic Coverage

Vendor shall provide service, sales and support resources to serve Customers at multiple geographic purchasing locations throughout the State of Texas.

7. Pricing

If Vendor offers and makes sales of products and services at a higher rate of discount, based on a quantity of one, from that specified in this Contract, to an eligible DIR Customer, other entity or consortia authorized by Texas law to sell products and services available under this Contract to eligible DIR Customers, then the available discount levels in this Contract shall automatically be adjusted to that higher discount rate.

A. Customer Discount

Based on a quantity of one (1), the minimum Customer discount from the Vendor for all Products and Services will be a percentage off the Manufacturer's Suggested Retail Price (MSRP), as listed below. Customer may negotiate more advantageous pricing for large volume purchases with the Vendor.

HP 9000 Series Servers, A Class – 22%

HP 9000 Series Servers, L Class – 41%

HP 9000 Series Servers, N Class – 46%

B. DIR Administrative fee

The DIR administrative fee specified in Section 10, Reporting and Administrative Fees, shall be included in the Customer Discount set forth herein. The administrative fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

C. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees or shall be broken out as a separate line item. Shipments will be F.O.B. Customers destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

D. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 USC Secs. 4253(i) and (j).

E. Changes to Prices

Vendor may change the price of any product or service at any time, based upon changes to the Manufacturer's Suggested Retail Price, but discount levels shall remain consistent with the discount levels specified within Section 7.A, Customer Discounts. Price decreases shall take effect automatically during this Contract term and Vendor shall pass all price decreases on to the Customer.

Vendor may make product model changes and add new products or product upgrades at any time and the pricing for the same shall incorporate comparable price discount levels as specified within Section 7.A, Customer Discounts.

8. Order Processing and Payments

All Customer purchase orders will be placed directly with the Vendor and shall reference Contract number DIR-VPC-01-007. Accurate purchase orders shall be effective and binding upon Vendor when placed in the mail or electronically transmitted prior to the termination or expiration of this Contract period.

Invoices shall be submitted by the Vendor directly to the Customer and shall be issued by the Vendor in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under this Contract and any provision of acceptance of such products and/or services shall be made to the Vendor by the Customer.

Invoices must be timely and accurate. Each invoice must match Customer's order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the order by the Customer.

Customer(s) shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. Payment under this contract shall not foreclose the right to recover wrongful payments.

9. Internet Access to Contract and Pricing Information

Access by Customers to Contract terms and pricing information shall be made available and posted on the Internet. To that end, upon sixty (60) days from execution of the Contract, Vendor will be required to host the complete Contract product and service offerings, including pricing, at Vendor's Internet site. Internet access to this information will be provided including all subsequent changes to the product and services offerings and pricing during the term of this Contract at no cost to DIR, the State, and Customers.

A. Accurate and Timely Contract Information

Vendor warrants and represents that Contract and related information will be accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-Contract offerings at Vendor's web site. Vendor shall indemnify DIR, the State, and Customers for damages resulting from errors or inaccuracies in such information, or from any failure to maintain or timely post Contract information in accordance with this paragraph.

B. Price Data Retention and Compliance Checks

Periodic Compliance Checks of the information posted for this Contract on Vendor's web site will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this site is uniform with the Customer Discount as stated within Section 7.A, Customer Discounts.

C. Web Site Changes

Vendor hereby consents to a link from the DIR web site to Vendor's web site in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

D. Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing State Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the State Contract, and shall not be disseminated to third parties or used for other marketing purposes. This Contract constitutes a public document under the laws

of the State and Vendor shall not restrict access to the Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

E. Responsibility for Content

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's web site. Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State. DIR requires Vendor to list all information on the web site, such as: company name, address, contact information, phone and fax number, email address, State Vendor ID number, and other applicable information as deemed necessary by DIR. Information consistent with the terms of this Contract about payment, shipping, returns, delivery terms and special pricing shall be available. DIR also reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent this Contract.

10. Reporting and Administrative Fees

Vendor shall be responsible for reporting all products and services purchased under this Contract. The failure to file the monthly reports, subcontract reports, and pay the administrative fees on a timely basis will constitute grounds for suspension or termination of the contract for cause. If Vendor submits three (3) consecutive monthly reports incorrectly, DIR reserves the right to suspend or terminate this contract for cause. Vendor's liability for any breach of this section is limited to the amount of administrative fees owed to DIR by Vendor.

DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books.

A. Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under this Contract for the previous month period. Reports shall be submitted to the DIR Go DIRECT Coordinator. Reports are due on the fifteenth (15th) day of the close of the previous month period. The monthly report shall include the Vendor's company name, each Customer name, order date, ship date, description, part numbers, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each line item sale must contain all information listed above or the report will be rejected and returned to the Vendor for correction.

B. Historically Underutilized Business Subcontract Reports

Vendor shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to this Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

Reports shall be due quarterly in compliance with the following schedule, or as requested by each ordering Customer:

September – November: due by December 5th

December – February: due by March 5th

March – May: due June 5th

June – August: due September 5th

C. DIR Administrative Fee

An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering this Contract. All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the

term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

Vendor will pay DIR, on the fifteenth (15th) day of the close of the previous month period, a two percent (2%) administrative fee based on the dollar value of all sales to Customers pursuant to this Contract. Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$2,000.

11. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given on i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party.

If sent to the State:

Patrick W. Hogan
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Fax: (512) 475-4759
Email: patrick.hogan@dir.state.tx.us

If sent to the Vendor:

Joe Kline
BCS Systems, Inc.
11490 Westheimer, Suite 200
Houston, Texas 77077
Phone: (281) 596-9800
Fax: (281) 596-9897
Email: jkline@bcssys.com

12. Captions

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

13. Choice of Law

The law of the State of Texas shall govern the construction and interpretation of this Contract. Nothing herein shall be construed to waive the state's sovereign immunity.

IN WITNESS WHEREOF, the parties hereby execute their mutual agreement to the terms of this Restated Volume Pricing Contract. This agreement shall be executed and shall be a binding Contract between the parties.

BCS System, Inc.

The State of Texas, acting by and through the
Department of Information Resources

Authorized By: 

Authorized By: 

Name: J.W. GIBSON

Name: Patrick W. Hogan

Title: PRESIDENT

Title: Director of Business Operations

Date: 8/28/2003

Date: 8-26-03

Legal: 

APPENDIX A

STANDARD CLAUSES
STATE OF TEXAS, DIR CONTRACTS

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APPENDIX A: STANDARD CLAUSES FOR TEXAS DIR CONTRACTS

The parties to the attached Contract, amendment or other agreement of any kind (hereinafter, "this Contract") agree to be bound by the following clauses which are hereby made a part of this Contract.

1. INDEMNIFICATION CLAUSE. Vendor shall defend, indemnify and hold harmless the State of Texas, its officers, agents, and employees from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities, including attorneys fees, arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, or suppliers of subcontractors in the execution or performance of this Contract and any Purchase Order(s) issued under this Contract.

The Vendor shall defend, indemnify and hold harmless the State of Texas, its officers, agents and employees, from any and all claims involving infringement of patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the use of any product or service supplied by the Vendor. Vendor agrees to defend against any and all such claims at Vendor's expense, whether or not such claims become the subject of litigation. DIR will provide reasonable assistance in the defense of such claims if so requested by the Vendor. Vendor agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

2. NON-ASSIGNMENT CLAUSE. This Contract shall be entered into and be binding upon the successors of the parties. Vendor may not assign this Contract without the prior written consent of DIR. Any attempt to assign this Contract without the written consent of DIR is null and void.

3. NO QUANTITY GUARANTEES. This Contract is not exclusive to the named Vendor. Customers may obtain Information Resources Technologies from other sources during the Contract term. DIR makes no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Information Resources Technologies will be procured through the Contract.

4. CONFIDENTIALITY CLAUSE. Vendor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

Under the terms of this Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release to any party in any manner, Customer information.

5. VENDOR CERTIFICATIONS.

Vendor certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this Contract; (v) it is not ineligible to receive this Contract under § 2155.004, Texas Government Code; (vi) it is in compliance with §618.003, Texas Government Code; (vii) it will comply with §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of this Contract; and (viii) to the best of the Vendor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Vendor, which if determined adversely to the Vendor will have a material adverse effect on the ability of the Vendor to fulfill its obligations under this Contract.

6. EQUAL OPPORTUNITY COMPLIANCE.

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under this Contract. If Vendor is found to be not in compliance with these requirements during the term of this Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

7. TECHNOLOGY ACCESS CLAUSE, AS REQUIRED BY §2157.005, TEXAS GOVERNMENT CODE. (Applicable to State Agency Purchases Only) Vendor expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to DIR and each Customer purchasing products under this Contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (i) providing equivalent access for effective use by both visual and non-visual means; (ii) presenting information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; and (iii) being integrated into networks for obtaining, retrieving, and disseminating information

used by individuals who are not blind or visually impaired. For the purposes of this section, the phrase "equivalent access means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples, of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

8. COMMODITY SOFTWARE. Texas Government Code, §2157.068 requires State agencies to buy commodity software in accordance with contracts developed by DIR, unless the agency obtains a waiver from DIR. Vendor shall agree to coordinate all agency commodity software sales made pursuant to this Contract through existing DIR contracts, if available. Vendor represents it will not license through a signed or unsigned license agreement, volume licensing agreement or an order confirmation, the commodity software to state agencies unless the agency is able to provide a DIR granted waiver that the agency is able to purchase the commodity software outside the DIR Commodity Software contracts. The operating system software and institutions of higher education are not bound to this Code.

9. RECORDS AND AUDIT. The Vendor shall maintain adequate records to establish compliance with this Contract until the later of a period of four years after termination of this Contract or until full, final and unappealable resolution of all audits or litigation issues that arise under this Contract. Such records shall include identification of the procuring Customer, documentation of the Customer's ordering date, Customer Purchase Order number, order date of product or service, ship date or service delivery date, full invoice address, unit price, extended price, invoice number, record of procuring Customer payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

Vendor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this Contract to DIR, the auditors designated by DIR, including auditors of the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or copying such books and records. Copies and printouts requested by DIR shall be provided by Vendor without charge. DIR shall provide Vendor ten (10) business days' notice prior to inspecting, auditing, and/or copying Vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor's personnel familiar with the Vendor's books and records shall be available to DIR staff and designees as needed. Vendor shall provide adequate office space to DIR staff during the performance of a compliance check or audit.

If any inspection or compliance check performed hereunder reveals an aggregate overcharge to a Customer of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such compliance check or inspection, including, but not limited to, the salary and associated overhead of DIR staff performing the compliance check or inspection, shall be reimbursed to DIR within thirty (30) days from receipt of an invoice from DIR reflecting the cost of the compliance check or inspection.

For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to the Vendor through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

Vendor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to this Contract. Vendor will reimburse the State of Texas for all costs associated with enforcing this provision.

10. ABILITY TO CONDUCT BUSINESS IN TEXAS. The Vendor is an entity authorized and validly existing under the laws of its state of organization, and is authorized to do business in the State of Texas. The Vendor is a "Qualified Information Systems Vendor" as defined in §2157.001, Texas Government Code. All products and services offered to Customers under this Contract are listed in Vendor's catalogue on file with the Texas Building and Procurement Commission.

11. QUOTATIONS, WARRANTY, AND RETURN POLICIES. Vendor will adhere to the Manufacturer's and/or Vendor's then-currently published policies concerning quotations, warranties, and return policies related to Products available under this Contract. Warranty and return policies for Customers will not be more restrictive or more costly than those warranty and return policies maintained by the Manufacturer and/or Vendor for other similarly situated Customers for like products or services.

12. INVALID TERM OR CONDITION. If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.

13. ENFORCEMENT OF CONTRACT AND DISPUTE RESOLUTION. Vendor and DIR agree to the following (i) a party's failure to require strict performance of any provision of this Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision; (ii) applicable to State agency purchases only, for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used;

(iii) the laws of the State of Texas shall govern this Contract; (iv) actions or proceedings arising from this Contract shall be heard in a court of competent jurisdiction in Travis County, Texas; and (v) nothing herein shall be construed to waive the State's sovereign immunity.

14. ENTIRETIES. The Contract supercedes all prior agreements, representations or promises, whether oral or written, made by the parties regarding the subject matter of this Contract.

15. MODIFICATION OF CONTRACT TERMS AND/OR AMENDMENTS. The terms and conditions set forth in the Contract shall govern all transactions by Customers under this Contract. The Contract may only be modified or amended upon mutual agreement of DIR and Vendor. Additional Customer terms and conditions, which do not conflict with the contract, may be added by a Purchase Order and given effect. For individual Purchase Orders, however, the Vendor may offer Customers more advantageous pricing and/or payment options than those set forth in the Contract. In such event, Vendor shall furnish a copy of such better offerings to DIR upon request.

16. DIR LOGO. Vendor may use the DIR Go DIRect logo in the promotion of this Contract to Customers with the following stipulations; (i) the logo may not be modified in any way; (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Vendor logo; (iii) the DIR logo is only used to communicate the availability of products and services under this Contract to Customers; and (iv) any other use of the DIR logo requires prior written permission from DIR.

17. VENDOR LOGO. DIR may use the Vendor's name and logo in the promotion of this Contract to communicate the availability of Products under this Contract to Customers. Use of the logo may be on the DIR Web Site or on printed materials. Any use of Vendor's Logo by DIR must comply with and be solely related to the purposes of this Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in this Contract will give DIR any right, title, or interest in or to Vendor's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor.

18. SITE PREPARATION. Customer(s) shall prepare and maintain its site in accordance with written instructions furnished by Vendor prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

19. TRADE SHOW PARTICIPATION. Vendor understands and agrees that it must participate by providing a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR Business Operations Division each calendar year at the Vendor's expense. Vendor must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location of the use of the DIR logo in or on the Vendor's booth.

20. USE OF SUBCONTRACTORS. Vendor may subcontract installation, training, warranty, or maintenance services. However, Vendor shall remain solely responsible for the performance of its obligations under this Contract. If Vendor uses any subcontractors, Vendor shall satisfy DIR that it has complied and maintains compliance with the DIR HUB Subcontracting Plan.

21. FORCE MAJEURE. DIR, Customer, or Vendor may be excused from performance under this contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties immediately. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Vendor will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

22. TERMINATION FOR NON-APPROPRIATION. Customer may terminate Purchase Orders and DIR may terminate this Contract if funds sufficient to pay obligations hereunder are not appropriated by the legislative body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Vendor will be provided ten (10) days written notice of intent to terminate.

23. TERMINATION FOR CONVENIENCE. Either party may terminate this Contract, in whole or in part, by giving the other party thirty (30) days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Vendor will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

24. TERMINATION FOR CAUSE. Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of this Contract or a Purchase Order arising hereunder. The non-defaulting party shall give the defaulting party thirty (30) days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate this Contract. Customers hereunder have no power to terminate this Contract for default. Customer's rights are exclusively based on their Purchase Order.

25. CUSTOMER RIGHTS UNDER TERMINATION. In the event this Contract expires or is terminated for any reason, a Customer shall retain its rights under the Purchase Order issued with respect to all products or services ordered and accepted prior to the effective termination or expiration date.

26. VENDOR RIGHTS UNDER TERMINATION. In the event this Contract expires or is terminated for any reason, a Customer shall pay all amounts due for products or services ordered prior to the effective termination or expiration date and ultimately accepted.

27. SURVIVAL. All warranty and/or service agreements that were entered into between Vendor and a Customer under the terms and conditions of this Contract shall survive the termination or expiration of this Contract.

28. HANDLING OF WRITTEN COMPLAINTS. In addition to other remedies contained in this Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Public Information Officer
300 W. 15th Street, Suite 1300
Austin, TX 78701
(512) 475-4700, voice
(512) 475-4759, fax

Appendix B

Texas Market Place Posting HARDWARE RE-BID 0706

Texas Building And Procurement Commission
Electronic State Business Daily
State Procurement Section of Texas Marketplace

View Newest Postings

Dukane, Elmo and Sanyo Projectors and HP 9000 Series Servers

Agency: DEPARTMENT OF INFORMATION RESOURCES

Open Date: 07/20/01 03:00 PM **Agency Requisition Number:** HARDWARE RE-BID 0706

Previous Price Paid: N/A

Deliver Date: 07/23/01

Bid type: 14 Days for entire bid or proposal solicitation package

NIGP Commodity Code(s):

Class-Item: 204 - 53

Class-Item: 207 - 75

Contact Information:

Contact Name: CATHY HARRIS
Email: cathy.harris@dir.state.tx.us
Address: 300 W 15th Suite 1300 78701
P. O. Box 13564
Austin, TX 78711-3564
Phone: (512) 463-6256
Fax: (512) 475-4759

NOTE: You will need to download all of the following files below for complete bid specifications.

Help: Right Click to and choose "save file as" or "save target as" to your computer. [More Help](#)
Must be QISV - QISV.txt size: 708 (in bytes) Format: (ASCII Plain Text)

Terms & Cond. - PURT&C02.doc size: 40960 (in bytes) Format: Word for Windows 97

-Bid Package 1 size: 82944 (in bytes) Type: Bid Specification Format: Word for Windows 6.0 / 95

-Bid Package 2 size: 178176 (in bytes) Type: Bid Specification Format: Word for Windows 6.0 / 95

-Bid Package 3 size: 125952 (in bytes) Type: Bid Specification Format: Excel for Windows 95

-Bid Package 4 size: 964608 (in bytes) Type: Additional Bid Specification(s) Format: Word for Windows 6.0 / 95

Details:

The State of Texas, acting by and through the Department of Information Resources is issuing this Invitation to Negotiate DIR for major hardware product lines for Fiscal Year 2002 (FY02) and Fiscal Year 2003 (FY03). Current vendors providing product lines as well as other approved QISV's are encouraged to respond to the Invitation to Negotiate (ITN) by the requested deadline. DIR is seeking QISV's to handle the following product lines: PROJECTORS Dukane Projectors (207-75) Elmo Projectors (207-75) Sanyo Projectors (207-75) SERVERS Hewlett Packard 9000 Series (204-53) DIR will review all proposals submitted and select vendors for further negotiations based on "best value" as described in State of Texas purchasing law. Please review the Marketplace Posting letter included with this posting for additional information. In addition to supplying information about your company, DIR requires that you complete the spreadsheet for the product line you are responding to. This spreadsheet represents a sample of products and pricing for comparison purposes.

Upload Date: 2001-07-06 11:00:33 Updated date: 2001-08-23 10:45:06